THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.20576 of 2001

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Dated: 17.03.2006

Between:

B. Dhananjaya Rao, S/o Mallaiah, Conductor, E.No. 204711, resident of PlotNo. 25, Raghavendrangar Colony, Hayatnagar, R.R. District.

..... PETITIONER

AND

The Industrial Tribunal-II, rep. by its Chairman, Chandravihar Building, 2nd Floor, M.J. Road, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.20576 of 2001

Order:

This writ petition is filed seeking to quash the award passed by respondent No.1-Labour Court-II, Hyderabad, in I.D. No. 107 of 1999, dated 12.01.2000 in so far as denying the back wages and inflicting the punishment of deferment of annual increment for a period of one year.

The petitioner was appointed as Conductor in respondent No.2-A.P.S.R.T.C. in 1992. On 31.05.1994, while he was conducting the bus service on the route No.204-K from Koti to Koheda, a check was exercised, and for certain cash and ticket irregularities, he was issued a charge memo. Thereupon, a charge sheet-cum-suspension order was issued to the petitioner on 02.06.1994. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 18.01.1995 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 28.01.1995, the respondent-Corporation ordered his removal. Against the order of removal, the petitioner filed appeal before the Senior

Manager (Operations) and also mercy appeal before the Regional Manager, which were dismissed by orders dated 27.03.1995 and 18.03.1996 respectively. Thereafter, the petitioner raised industrial dispute in I.D. No. 107 of 1999 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service with continuity of service but without back wages and postponed one annual increment for a period of one year. Assailing the award of the Labour Court in so far as denying the back wages and inflicting the punishment of deferment of annual increment for a period of one year, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that on the date of check the bus was over crowded than its normal capacity, and when the petitioner demanded the fare amount from the passengers in question, they stated that they already purchased the tickets and since the bus was over crowded, the petitioner had not physically verified the tickets issued and the number of passengers in the bus. He submits that the petitioner did not collect the fare from the passengers in question and in fact they did not tender the fare amount. He submits that there is no supporting evidence to prove the charges leveled against the petitioner. He further submits that the Checking Officials have failed to check the cash and in the absence of verifying the cash by the Checking Officials, the Enquiry Officer cannot come to the conclusion that the petitioner collected the fare from the passengers and not issued the tickets, as such, the enquiry stood vitiated. He submitted that the petitioner has not misappropriated any amounts, much less the ticket amounts, and the award of the Labour Court in so far as denying the back wages and inflicting the punishment of deferment of annual increment for a period of one year is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court and allow the writ petition.

The respondent-Corporation filed counter. Reiterating the counter averments, the learned Standing Counsel for the respondent-Corporation contended that at the time of check there were only 24 + 3 passengers in the bus, hence, the contention of the petitioner that the bus was over crowded is not tenable. He submits that the petitioner despite collecting the requisite fare of Rs.2.50 ps., from each of three passengers failed to issue tickets, which fact was corroborated by the statements of

passengers recorded at the time of check and attested by the petitioner, and therefore, his plea that he did not misappropriate any amount, is incorrect. He submitted that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct of misappropriation, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and taking into consideration the past service of the petitioner and to give one more opportunity to him, modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service with continuity of service, but without back-wages and postponed the annual increment for a period of one year, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai,** the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry, and the departmental enquiry was held valid by order dated 03.02.1999 of the Labour Court. The petitioner was charge sheeted with three charges i.e., (1) for having violated the rule of completion of ticket issues within one fare stage, (2) for having collected the requisite fare of Rs.2.50 ps., each from a batch of three passengers boarded bus at Hayathnagar stage No.9 and bound for Koheda stage No.15, but failed to issue tickets to them, and (3) for having closed the S.R up to stage No.13 without completing the above issues. In the departmental enquiry, the Enquiry Officer, on consideration of the evidence of the Checking Officials, and statements of the petitioner and passengers, who were traveling in the bus on the date of incident, found that the petitioner, having collected the fare of Rs.2.50 ps., each from three passengers, failed to issue tickets to them, and accordingly, held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed

punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, observed that the punishment of removal of the petitioner from service is too harsh, and in order to give one more opportunity to the petitioner, directed the Corporation to reinstate the petitioner into service with continuity of service, but without back wages and postponed annual increment for a period of one year. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service with back wages, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and passed the present award.

The award of the Labour Court judged from the parameters of certiorari jurisdiction of this Court under Article 226 of the Constitution of India, does not call for interference, for the petitioner failed to point out any infirmities.

The writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 17.03.2006

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